

IN THE UNITED STATES DISTRICT COURT

FILED
U.S. DISTRICT COURT
AUGUSTA DIV.

FOR THE SOUTHERN DISTRICT OF GEORGIA

2001 JAN 18 A 436

AUGUSTA DIVISION

CLERK *B. McCastay*
S. DIST. CT. OF GA.

LAWRENCE RUPERT SMITH,)
Petitioner,)
v.) CV 106-059
CYNTHIA NELSON, Warden,)
Respondent.)

ORDER

After a careful, *de novo* review of the file, the Court concurs with the Magistrate Judge's Report and Recommendation, to which no objections have been filed. Accordingly, the Report and Recommendation of the Magistrate Judge is **ADOPTED** as the opinion of the Court. Therefore, Respondent's motion to dismiss is **GRANTED IN PART** and **DENIED IN PART**, claim three in Petitioner's § 2254 petition is **DISMISSED** without prejudice, and the remainder of Petitioner's § 2254 petition shall be allowed to proceed. Respondent has twenty (20) days from the date of this Order to brief her position as to Petitioner's remaining claims

SO ORDERED this 18th day of January, 2007, at Augusta, Georgia.

Rudolph G. Boas Jr.
UNITED STATES DISTRICT JUDGE